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APPENDIX A

QUOTED FROM AN ARTICLE ENTITLED "THE REVISION OF THE FEDERAL RULES OF CIVIL PROCEDURE," BY HON. ARMISTEAD M. DOBIE, IN 30 VIRGINIA LAW REVIEW, PAGE 513, COMMENCING AT PAGE 520

Rule 50. Motion for a Directed Verdict; (and for Judgment).

The words in parentheses are added to the old title of this rule. A number of deletions and additions have been made to subdivision (b), and the title of this subdivision has been changed from "Reservation of Decision on Motion" to "Motion for Judgment." Indeed, this subdivision has been completely rewritten to accomplish three purposes.

The amended rule clearly recognizes the power of the District Court to enter a judgment notwithstanding a verdict of a jury (or even, when the jury cannot agree, there has been *no* verdict), under a previous motion for the direction of a verdict. The awkard fiction of *Baltimore & Carolina Line v. Redman*,[7] is frankly eliminated. This case whipped the devil around the stump in order to minimize the evil effect of the Supreme Court's unfortunate decision in *Slocum v. New York Life Insurance Co.*[8]

Secondly, the amended rule permits an appellate court to order a final judgment (instead of granting a new and futile trial) in accordance with a motion in the trial court for a directed verdict, though no motion (after the verdict) was made in the trial court for judgment notwithstanding the verdict. While careful lawyers will always, in such cases, make a motion for judgment *non obstante veredicto*,

[7] 295 U. S. 654 (1935).

[8] 228 U. S. 364 (1913). This decision has been bitterly criticised by a host of writers and scholars.

this writer believes the amendment here accomplishes an altogether desirable purpose.[9]

Finally, a new paragraph is added at the end of this subdivision which reads: "A motion for a new trial, in the alternative, may be joined with a motion for judgment and the court shall dispose of the alternative motion for a new trial when ruling on the motion for judgment. If the motion for judgment is granted by the district court, its contemporaneous ruling on the motion for new trial is effective only in the event that the judgment is reversed and the case is remanded by the appellate court for further proceedings." The first sentence of this paragraph incorporates the decision of the Supreme Court in *Montgomery, Ward & Co. v. Duncan*[10] as to the proper practice here. The second added sentence avoids the unfortunate situation involved in *County of Allegheny v. Maryland Casualty Co.*,[11] and adopts the practice followed in *McIlvaine Patent Corporation v. Walgreen*.[12]

APPENDIX B

RULE 27 OF THE SUPREME COURT OF SOUTH CAROLINA, QUOTED FROM VOLUME I, CODE OF LAWS OF SOUTH CAROLINA 1942, PAGE 1446

When an appeal is sustained on the ground that a nonsuit should have been granted because of a failure of evidence, or because the evidence is susceptible of but one inference, the reversal of the judgment shall have the same

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[9] Some federal appellate courts have held that this power existed under the old rule. *Conway v. O'Brien*, 111 F. (2d), 611 (C. C. A. 2d, 1940), reversed on other grounds, 312 U. S., 492 (1941); *Berry v. United States*, 111 F. (2d), 615 (C. C. A. 2d, 1940), reversed on other grounds, 312 U. S., 450 (1941); *United States v. Halliday*, 116 F. (2d), 812 (C. C. A. 4th, 1941), reversed on other grounds, 315 U. S., 94 (1942); *Howard University v. Cassell*, 126 F. (2d), 6 (App. D. C., 1941), cert. denied, 316 U. S., 675 (1942); *Lowden v. Bell*, 138 F. (2d), 558 (C. C. A. 8th, 1943). The Supreme Court has gracefully sidestepped this question. The author of this article wrote the opinion in *United States v. Halliday, supra*.

[10] 311 U. S. 243 (1940).

[11] 132 F. (2d), 894 (C. C. A. 3d, 1943).

[12] 138 F. (2d), 177 (C. C. A. 7th, 1943).

effect as if the nonsuit had been ordered, except when the cause of action will be barred by the statute of limitations before a new action can be brought; and when an appeal is sustained on the ground that a verdict should have been directed, the reversal of the judgment shall have the same effect as if a verdict had been returned by the jury under the direction of the court; but this court will not sustain an appeal from the refusal to direct a verdict, when, under all the circumstances, a nonsuit would have been the appropriate remedy.

APPENDIX C

SECTION 904, QUOTED FROM VOLUME I, CODE OF LAWS OF SOUTH CAROLINA 1942, PAGE 648

Judges to meet and make general rules.—The justices of the Supreme Court and the judges of the circuit courts shall meet in general convention on such day and at such place as may be designated by the Chief Justice, at least once in every two years, counting from the year of our Lord one thousand eight hundred and eighty-two, for the purpose of revising and amending the rules of the circuit court, and establishing such additional rules as may be deemed necessary to regulate the practice in the circuit courts; provided, such alterations or additions be not inconsistent with any of the statutes of this State; provided, further, that said judges shall cause to be transmitted to all the clerks of the circuit courts of this State copies of all rules amended and revised, and of all new rules made by them, within ten days from such amendment, revision or adoption.

APPENDIX D

RULE 79 OF THE CIRCUIT COURT OF SOUTH CAROLINA, QUOTED FROM VOLUME I, CODE OF LAWS OF SOUTH CAROLINA 1942, PAGE 1428

Motion *non obstante veredicto*—motion for new trial.—Whenever a motion for a directed verdict, made by

either party at the close of all the evidence, is denied, or for any reason is not granted, the trial court may, after verdict, upon motion made therefor, order judgment to be entered notwithstanding the verdict in favor of the party who was entitled to have a verdict directed in his or its favor. Such motion *non obstante veredicto* must be made after the reception of the verdict, and before the adjournment of the court in which the case was tried. A motion for a new trial may be joined with the motion *non obstante veredicto*, or a new trial may be prayed for in the alternative.

APPENDIX E

SECTION 374 (2), QUOTED FROM VOLUME I, CODE OF LAWS OF SOUTH CAROLINA 1942, PAGE 207

(2) The plaintiff in all actions for recovery of real property, or the recovery of the possession thereof, is hereby limited to two actions for the same, and no more; provided, that the costs of the first action be first paid, and the second action be brought within two years from the rendition of the verdict or judgment in the first action, or from the granting of a nonsuit or discontinuance therein.